

1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 16-11390-smb

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5 In the Matter of:

6 BREITBURN ENERGY PARTNERS LP

7

8 Debtor.

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11 U.S. Bankruptcy Court

12 One Bowling Green

13 New York, NY 10004

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15 August 18, 2016

16 11:00 AM - 12:39 PM

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23 B E F O R E :

24 HON STUART M. BERNSTEIN

25 U.S. BANKRUPTCY JUDGE

1 Hearing re: Case Conference

2

3 Hearing re: Debtors' Motion to Seal Exhibits to Declaration  
4 of James Jackson Supporting Motion Approving Retention and  
5 Incentive Programs.

6

7 Hearing re: Application of Official Committee of Unsecured  
8 Creditors under 11 U.S.C. 1103 and Fed. R. Bankr. P. 2014  
9 and 5002, for Order Authorization Retention and Employment  
10 of Quinn Emanuel Urquhart & Sullivan, LLP as Conflicts  
11 Counsel.

12

13 Hearing re: Application of the Official Committee of  
14 Unsecured Creditors of Breitburn Energy Partners LP, et al.,  
15 for Entry of an Order Authorizing the Employment and  
16 Retention of Porter Hedges LLP as Special Counsel.

17

18 Hearing re: Motion of Debtors Pursuant to 11 U.S.C. §§  
19 105(a) and 363 and Fed. R. Bankr. P. 2002 for Entry of an  
20 Order Authorizing Debtors to Sell Certain Non-essential  
21 Assets.

22

23 Hearing re: Motion of Debtors Pursuant to 11 U.S.C. §§ 105  
24 and 365 and Fed. R. Bankr. P. 6006 and 9019(a) for Entry of  
25 an Order Approving (I) Assumption of Executory Contract and

(II) Settlement Between Debtors and GEXA Energy LP.

Hearing re: Motion of Debtors Pursuant to 11 U.S.C. § 365 and Fed. R. Bankr. P. 6006 to Assume and Assign Enterprise Fleet Lease, as Amended.

Hearing re: Application of Debtors Pursuant to 11 U.S.C. § 327(e), Fed. R. Bankr. P. 2014(a) and 2016, and Local Rules 2014-1 and 2016-1 for Authorization to Employ and Retain Coghlan Crowson, LLP as Litigation Counsel for the Debtors Nunc Pro Tunc to the Petition Date

Hearing re: Application of Debtors Pursuant to 11 U.S.C. §§ 327(a) and 328(a) and Fed. R. Bankr. P. 2016(a), Authorizing Debtors to Employ and Retain PricewaterhouseCoopers LLP as Auditor and Tax Advisor Nunc Pro Tunc to the Petition Date.

Hearing re: Motion of LL&E Royalty Trust for Relief from the Automatic Stay.

Hearing re: . Motion of Debtors Pursuant to 11 U.S.C. §§ 105, 361, 362, 363, and 364 and Fed. R. Bankr. P. 4001 and Local Rules 4001- and 4001-2 for Authority to (A) Obtain Postpetition Financing, (B) Use Cash Collateral, (C) Grant Certain Protections to Prepetition Secured Parties, and (D)

1 Related Relief

2  
3 Hearing re: Motion of Debtors Pursuant to 11 U.S.C. §§ 105,  
4 363(b), and 503(c)(3) for Entry of an Order Approving  
5 Debtors' Retention and Incentive Programs for Certain Key  
6 Employees

7  
8 Hearing re: Motion for Preliminary Injunction filed by  
9 Felicia Pierce.

10  
11 Hearing re: Order to Show Cause Why an Official Committee of  
12 Equity Security Holders Should Not Be Appointed.

13  
14 Hearing re: Motion of Debtors Pursuant to 11 U.S.C. § 365  
15 Approving Rejection of an Unexpired Non-residential Real  
16 Property Lease and the Related Subleases for the Premises  
17 Located at 600 Travis Street, Houston, Texas, Effective as  
18 of May 31, 2016

19  
20 Hearing re: Texas Tower Limited's Motion for Payment of  
21 Administrative Expense Claim.

22  
23  
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25 Transcribed by: Sonya Ledanski Hyde

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1 P R O C E E D I N G S

2 CLERK: Breitburn.

3 MR. KAROTKIN: Good morning, Your Honor. Stephen  
4 Karotkin, Weil, Gotshal & Manges, for the Debtors. I'm here  
5 with my colleague, Mr. Schrock.

6 MR. SCHROCK: Good morning, Judge.

7 THE COURT: Good morning.

8 MR. KAROTKIN: Unless Your Honor has some other  
9 scheduling in mind, I would suggest we proceed with the  
10 agenda.

11 THE COURT: Well, let's take Miss Pierce's case.

12 MR. KAROTKIN: Okay.

13 THE COURT: Ms. Pierce? You can step up. Someone  
14 give her a seat, please. Let me start with your payment of  
15 your fee.

16 MS. PIERCE: Okay.

17 THE COURT: I've entered an Order. You can have a  
18 copy. To refund the money, you have to fill out an ROS form  
19 for it. So if you go down to Room 534 after the hearing,  
20 they'll start the paperwork. I don't know how long it'll  
21 take.

22 MS. PIERCE: Okay.

23 THE COURT: All right? You're trying to get money  
24 from the government, so good luck. As I understand it,  
25 you're seeking to enjoin drilling on your land pending a

1 determination of the ownership issue.

2 MS. PIERCE: Yes. Right now, I'm in a Trespass to  
3 Try Title suit in Texas, and I was here about a month ago to  
4 get the stay listed, which was modified. But the thing is I  
5 tried to send in a motion for injunction with the court in  
6 Texas, and they said I'm violating the stay, so that's the  
7 reason why I sent the motion here.

8 THE COURT: And so tell me how long has this  
9 drilling been going on?

10 MS. PIERCE: For 80 something years, about 85  
11 years.

12 THE COURT: Well, it hasn't -- Breitburn hasn't  
13 been doing the drilling.

14 MS. PIERCE: Oh, Breitburn, about since 2012.

15 THE COURT: All right. So it's about four years  
16 of drilling.

17 MS. PIERCE: Yes, sir.

18 THE COURT: And that's every day?

19 MS. PIERCE: Every day, yes, sir.

20 THE COURT: Okay. And tell me why, if you thought  
21 about it --

22 MS. PIERCE: I'm sorry, sir.

23 THE COURT: If you're right in the end, they must  
24 keep records about what they take out of the ground, why  
25 they couldn't simply give you a check at the end of the day

1 with the terms that you really owned the property.

2 MS. PIERCE: Oh, well, one of the things, we did  
3 go to Breitburn about a year ago actually. It was about a  
4 year ago, and we did speak to them about what the issue was,  
5 and that, you know, let them know that they were  
6 trespassing. But the thing is that they're claiming it's  
7 under adverse position.

8 THE COURT: No, I understand there's a dispute  
9 about who owns the land.

10 MS. PIERCE: Yes, sir.

11 THE COURT: And that's what's supposed to be  
12 resolved in Texas. And my only point really is, doesn't it  
13 make sense to have that issue resolved in Texas -- and I  
14 don't know what's going on there at this point on this issue  
15 -- and then it turns out that you own the land and you're  
16 entitled to money from them to taking the minerals, you send  
17 them a bill.

18 MS. PIERCE: Well, one of the issues is that, like  
19 I said, they're going to continue to accumulate damages that  
20 will be accumulated on our side. And I do understand what  
21 you're saying as far as what they're trying to do right now,  
22 I'm having issues in Texas, just to be honest with you. I  
23 had a summary judgment that was actually set for hearing on  
24 the 2nd of September, which now has been pushed out, and  
25 they allowed the Defendant to come in for a dismissal on my

1 case. And my thing is, the issue here is, there's no way  
2 that, under adverse possession, like I said, there's no way  
3 for anyone to own property or for them to claim an ownership  
4 on my property under adverse position if -- I mean, you can  
5 take into --

6 THE COURT: But that's an issue for the Texas  
7 Court.

8 MS. PIERCE: Yes, sir.

9 THE COURT: That's what Texas Court is going to --  
10 so if I do hear an injunction motion -- and I'm not hearing  
11 it today, I'm hearing theirs today.

12 MS. PIERCE: Yes.

13 THE COURT: I'm going to have to make the same  
14 determination, or at least figure out whether you're likely  
15 to succeed on that determination, so you wind up trying the  
16 same case twice essentially. And that doesn't sound like it  
17 makes a lot of sense.

18 MS. PIERCE: Yeah. That's the reason why I put  
19 the lis pendens back on the -- in Texas. I put the lis  
20 pendens on there. The lis pendens sat out there for five  
21 months and nobody could dispute it. Now there was an ad put  
22 in the newspaper that I was unlawfully clouding the  
23 property, but no one brought a motion to expunge it, no one  
24 -- because they can't. And that's the reason why I reported  
25 bankruptcy fraud because they're bringing this property to

1 be taken by the Court.

2 And it's putting me in a situation and my family  
3 in a situation where I'm having to come here because six  
4 days later after I filed this lawsuit and, like I said, it's  
5 been going on for years, so a lot of money been made --  
6 we're talking about millions of dollars been made out there  
7 -- and that's the reason why I followed them here. I  
8 followed him because I knew I had the evidence, and that's  
9 what's been avoided in Texas and that's been avoided right  
10 now.

11 THE COURT: But isn't it coming to a head in  
12 Texas. In other words, you've moved for summary judgment,  
13 and as I understand it, the Defendants have moved to  
14 dismiss.

15 MS. PIERCE: Yeah, they moved for a dismiss. They  
16 pushed my date back so they can move for a dismiss on the  
17 2nd and push mine back to October 7th.

18 THE COURT: But, okay, all right. Let me hear  
19 from the Debtor.

20 MS. PIERCE: Okay.

21 THE COURT: In terms of what's going on in Texas  
22 and what the schedule is.

23 MR. KAROTKIN: I don't exactly know what's going  
24 on in Texas, but what Miss Pierce says sounds correct. We  
25 can certainly get more details on that. We did, Your Honor,

1 as you know, agree to accommodate Miss Pierce, agree to a  
2 limited modification of the estate, elect the litigation to  
3 proceed in Texas. Despite that, she's now seeking this  
4 injunctive relief down here.

5 THE COURT: Well, she's seeking additional relief.  
6 She's seeking what's based on the assumption or the belief  
7 that she owns the property.

8 MR. KAROTKIN: I understand that.

9 THE COURT: As opposed to just determining the  
10 dispute.

11 MR. KAROTKIN: I understand that. She's also sent  
12 letters to the Department of Justice asserting bankruptcy  
13 fraud and other things.

14 THE COURT: That's her right as a citizen.

15 MR. KAROTKIN: I think that borders on continuing  
16 violations of the stay, Your Honor, seeking to enforce her  
17 claim, but we can leave that for another day.

18 As you said before, we're happy to go forward in  
19 Texas to adjudicate the primary issue. And as you said, if  
20 she wins, she has a claim like everybody else. But beyond  
21 that, we're not prepared to agree to anything. If she  
22 commences an adversary proceeding, we'll address the  
23 allegations at the appropriate time.

24 THE COURT: All right. Miss Pierce, it doesn't  
25 look like there's a meeting of the minds in terms of how to



1 proceed. So what you're going to have to do is file an  
2 adversary proceeding --

3 MS. PIERCE: I did that.

4 THE COURT: -- and identify who it is you're  
5 suing, because I'm looking at what you filed, the motion,  
6 and you have listed the United States Trustee Susan Golden,  
7 Richard Morris. You're not suing those people; they have  
8 nothing to do with the drilling. It's the entity that has  
9 the rights and/or is actually doing the drilling that you're  
10 looking to stop. So if you file an adversary proceeding,  
11 then I'll treat this motion as a motion for a preliminary  
12 injunction and I'll schedule an evidentiary hearing.

13 MS. PIERCE: You said if I do the adversary?

14 THE COURT: You got to file an adversary  
15 proceeding.

16 MS. PIERCE: I did that this morning. I filed an  
17 adversary this morning.

18 THE COURT: Okay. Who's the Defendant in the  
19 adversary?

20 MS. PIERCE: I have Breitburn, but I also have the  
21 Trustees on there as well, but I have Breitburn down as the  
22 Defendant.

23 THE COURT: All right. I'll schedule a hearing on  
24 the motion for preliminary injunction.

25 MS. PIERCE: Okay. And, Your Honor, before we end

1 this, I want to say one other reasons why I wanted to go  
2 ahead and get this done because they often reconstructing,  
3 and this is done too. I don't know what's going to happen  
4 as far as the monetary gain from these, and it may -- you  
5 know, we may not come out with the same amount of damages  
6 because of that. And that's the reason why I'm asking that  
7 you go ahead and order that Breitburn --

8 THE COURT: The damages may not be the same, but -  
9 - well, your damages will be the same, but the amount that  
10 it's worth may not be the same.

11 MS. PIERCE: Exactly. So I would just ask let you  
12 go ahead and order, I mean, at least until we can resolve  
13 this in Texas and that's up until October.

14 THE COURT: When is the motion for, when is the  
15 motion to dismiss scheduled for in Texas?

16 MS. PIERCE: It's on the 2nd of September.

17 THE COURT: The 2nd of September.

18 MS. PIERCE: Yes, sir. And then my motion for  
19 summary judgment is on October 7th, so I'm just kind of --  
20 I'm asking that you do it at least up until October 7th.

21 THE COURT: Well, I'll certainly wait because, you  
22 know, if the Texas Court resolves the issue, that'll make it  
23 simpler. Why don't we do this; why don't we have another  
24 conference sometime around the middle of October. You can  
25 appear by telephone if you want; you don't necessarily have

1 to come out.

2 MS. PIERCE: Is there any way that you could do up  
3 until the 2nd at least of September?

4 THE COURT: Let's see what the Texas Court does.  
5 It may not decide the matter anyway; it may reserve decision  
6 to review the papers, or it may simply decide the matter.  
7 But, and independent of what it decides, may have or may not  
8 have relevance in terms of the argument you're making.

9 MS. PIERCE: Your Honor, I mean, I don't want to  
10 be a -- I really need for you to do this. I really do. I  
11 need for you to do this so that we can move because they are  
12 continuing damages. They are still -- it is what it is  
13 itself, and they are stealing for us, and the came to the  
14 bankruptcy court to get away from this case is what it is.  
15 We're just asking that you go ahead and grant the injunction  
16 so we could move for -- because going to continue to do  
17 this.

18 THE COURT: I'm not going to grant the injunction  
19 today. And I will tell you two things, I don't want to  
20 argue with you today. One, I don't think you're irreparably  
21 harmed. The law means you don't have an adequate remedy at  
22 law, and damages are an adequate remedy at law. And even if  
23 I grant the injunction, it's going to be conditioned on your  
24 posting a bond.

25 MS. PIERCE: Okay.

1 THE COURT: So depending on the amount of money  
2 that they could lose during the duration of the injunction,  
3 that bond may be very, very large because they don't have to  
4 bear the risk necessarily that they're right and you're  
5 wrong. You're the person seeking the injunction. I just  
6 want you to bear that in mind that you could win the battle  
7 and lose the war on this one at the end of the day.

8 But what I will is I will schedule another  
9 conference for October 18th. As I say, you could appear  
10 telephonically if you want. You're welcome to come up --  
11 the weather is still nice -- and do your thing. It'll be at  
12 10:00. If you do want to appear telephonically, you have to  
13 look at our website. We use something called Court Cal, and  
14 it'll tell you how to dial in and arrange to use it. Okay?  
15 But if you can't figure it out, just call my chambers.

16 MS. PIERCE: Can I ask you as far as with the lis  
17 pendens be out there.

18 THE COURT: I don't understand what that means;  
19 lis pendens usually just means that if you transfer  
20 property, you transfer it subject to whatever interest is  
21 listed. So if they're going to transfer the property, I  
22 guess there's a lis pendens. Whether or not the filing of  
23 that lis pendens violated the automatic stay, I don't know.  
24 Because if it interferes with their possession or control of  
25 the property, it might, but that's for another day.

1 I think that what you want is the Texas Court to  
2 decide whether you own the land or not, and that's what you  
3 should be focused on. And I appreciate the fact that you're  
4 losing money, or you feel you're losing money, because  
5 they're withdrawing the valuable minerals or oil and gas  
6 from the property, but it's been going on for four years  
7 already.

8 MS. PIERCE: Yeah.

9 THE COURT: And that's another thing that cuts  
10 against your argument that you've been irreparably harmed.  
11 But why don't we have another conference on October 18th.  
12 You can report back in terms of what's happening. And if  
13 nothing's resolved, I'll just schedule a hearing on the  
14 motion for a preliminary injunction.

15 MS. PIERCE: Okay. Will we doing a -- do I need  
16 to schedule a hearing for the adversary?

17 THE COURT: The adversary, they'll issue a  
18 summons, which will schedule a hearing. Do you have a  
19 summons yet?

20 MS. PIERCE: I'll have to get the summons.

21 THE COURT: When you get the summons, it will  
22 schedule a hearing date.

23 MS. PIERCE: Okay.

24 THE COURT: You'll see it one of the boxes there,  
25 a pretrial conference date, but that's just a pretrial

1 conference. Okay?

2 MS. PIERCE: Okay.

3 THE COURT: All right, good luck. You want to be  
4 heard on this matter, Mr. Morrissey.

5 MR. MORRISSEY: If I may, yes. For the record,  
6 Richard Morrissey for the U.S. Trustee. As Your Honor has  
7 noted, both Susan Golden and I have been named as party  
8 Defendants in this adversary proceeding. And just to inform  
9 Your Honor, there is an adversary proceeding number, so  
10 there was a Complaint filed.

11 THE COURT: What's the adversary proceeding?

12 MR. MORRISSEY: The number is 16-01198.

13 THE COURT: 01198, okay.

14 MR. MORRISSEY: And I'm sure Your Honor will not  
15 be surprised to hear that we would like to have ourselves  
16 dismissed as party Defendants, especially in light of the  
17 fact that no summons has yet been issued. We'd like to do  
18 that, if possible, before that if Miss Pierce is amenable to  
19 that.

20 THE COURT: I don't think you have a claim against  
21 the Department of Justice; they're not drilling.

22 MS. PIERCE: No, I didn't.

23 THE COURT: And they'd rather not be included as  
24 parties in the lawsuit because then they have to turn it  
25 over to the Department of Justice to defend them and make a

1 motion to dismiss and then you'll have to come up, and I'll  
2 probably dismiss them from the case anyway.

3 MR. MORRISSEY: So I think the simplest thing,  
4 Your Honor, would be simply if we could submit an Order to  
5 the Court dismissing the two of us as party Defendants.

6 THE COURT: You know, you're named and there's a  
7 procedure for that. Why don't you talk to Ms. Pierce about  
8 asking her if she would agree to dismiss you and Ms. Golden.  
9 If not, you can make a motion to dismiss. It doesn't have  
10 to be extensive.

11 MR. MORRISSEY: If Ms. Pierce does agree, perhaps  
12 a Stipulation.

13 THE COURT: A Stipulation is fine.

14 MR. MORRISSEY: Thank you, Your Honor.

15 THE COURT: Okay. I don't think you want to sue  
16 them. Okay, back to the calendar. Thank you very much.

17 MS. PIERCE: Thank you.

18 THE COURT: If you go down -- Miss Pierce, if you  
19 go down to Room 534, they should give you the IRS W-9 form  
20 if they have it. It's in the Order, it'll tell you exactly  
21 what you need to do. Good luck.

22 MS. PIERCE: Thank you.

23 THE COURT: By the way, you know, you have to pay  
24 a filing fee for the adversary. Did you do that?

25 MS. PIERCE: I did.

1 THE COURT: Okay. All right, let's go back to the  
2 beginning of the calendar now.

3 CLERK: Start with #1, sir?

4 THE COURT: All right, numbers -- we're actually  
5 doing to do 1 and 2 together. Numbers 1 and 2 are  
6 applications by the creditor's committee to retain conflicts  
7 counsel and special counsel on behalf of the --

8 MR. KAROTKIN: (indiscernible) yesterday, we have  
9 certificates of no objection.

10 MR. LEBLANC: Numbers 3 is signed, Your Honor, but  
11 not items #1 and 2. We may have missed it, but either way,  
12 we just ask the Court to enter them this morning.

13 THE COURT: All right, I thought I had signed it.  
14 But is there any objection to the retention of -- what it is  
15 -- committee counsel and special counsel?

16 MR. LEBLANC: It's a conflict, yes -- co-counsel  
17 for the committee and special counsel to do certain  
18 investigations.

19 THE COURT: Okay. Does anybody object? The  
20 record should reflect there's no response. Those  
21 applications are granted. As I say, I thought I signed the  
22 Orders, but if I didn't, just submit Orders.

23 MR. KAROTKIN: Number 3, Your Honor, you did sign  
24 it.

25 THE COURT: So it is signed.



1 MR. KAROTKIN: Number 4, another uncontested  
2 motion requesting authority to sell certain nonessential  
3 assets. I will point out, Your Honor, that there are three  
4 transactions in there. We are not seeking approval at this  
5 time of the transaction with GEXA; that will be adjourned to  
6 another date. The other two are relatively minor  
7 transactions: one for certain oil and gas leases and related  
8 assets for \$150,000; and the other with respect to certain  
9 non-core surface rights for \$75,000.

10 Your Honor, these really are in the ordinary  
11 course of business. But out of an abundance of caution, we  
12 are asking the Court for approval. The only objection that  
13 was filed, Your Honor, was by U.S. Specialty Insurance.  
14 We've had conversations with them; that objection has been  
15 resolved by me making a representation that no U.S.  
16 Specialty bond is affected by the relief sought in the  
17 motion, and we so represent that.

18 The U.S. Attorney's Office also requested that we  
19 include certain language in the proposed Order, some  
20 customary language with respect to environmental matters,  
21 which we have agreed to include. I can hand up the revised  
22 Order if you'd like.

23 THE COURT: Why don't you just drop it off in  
24 chambers. Let me ask, does anybody want to be heard in  
25 connection with the motion? The record should reflect

1 there's no response. I will grant the applications.

2 MR. KAROTKIN: Thank you, sir.

3 THE COURT: Next is the Enterprise contract.

4 MR. KAROTKIN: Again, no objections were filed to  
5 that. The motion is self-explanatory. It's really no  
6 economic impact on the Debtors, but to recognize the fact  
7 that certain vehicles will be kept by the Debtors, certain  
8 will be kept by Pacific Coast Energy as the Debtors will no  
9 longer have any interest to them. All of the parties have  
10 agreed and no objections were filed.

11 THE COURT: Does anybody want to be heard in  
12 connection with that application? The record should reflect  
13 there's no response. It's granted.

14 MR. KAROTKIN: I think we skipped #5.

15 THE COURT: Is that the one we just did, or is  
16 that GEXA?

17 MR. KAROTKIN: Yeah.

18 THE COURT: Okay, go ahead.

19 MR. KAROTKIN: That's an Order approving  
20 essentially a settlement in GEXA Energy, which is a utility  
21 supplier, that resolves any concerns that GEXA had with  
22 respect to the 366 Order entered earlier in the case.  
23 Again, the motion is self-explanatory and no objections were  
24 filed.

25 THE COURT: Does anybody want to be heard in

1 connection with that motion? The record should reflect  
2 there's no response. It's granted.

3 MR. KAROTKIN: Numbers 7 and 8, perhaps we could  
4 take together. Number 7 is an application for the Debtors  
5 to retain Coghlan Crowson, LLP as litigation counsel for the  
6 Debtors and nunc pro tunc to the petition date. As I  
7 recall, Your Honor, this is the law firm that is involved  
8 with the Piece action in Texas. Again, no objections filed;  
9 we would ask that that be granted. And Number 7 is the  
10 application for the Debtors to employ and retain Price  
11 Waterhouse as their auditors and tax advisors. Again, both  
12 of these objections have -- both of these applications have  
13 been reviewed with the Office of the United States Trustee.  
14 To their requested any modifications, those were made, and I  
15 believe the U.S. Trustee has signed off on them.

16 THE COURT: Does anybody object to the retention  
17 of Coghlan Crowson as special counsel in the Texas  
18 litigations? The record should reflect there's no response.  
19 That's approved. Does anybody want to be heard on Price  
20 Waterhouse retentions? The record should reflect there's no  
21 response. I just have a couple of comments: one, there's a  
22 dispute resolution provision.

23 MR. KAROTKIN: This is in Price Waterhouse, sir?

24 THE COURT: Yeah. If you're looking at the top,  
25 you know, with the ECF numbers, it's page 34 of 73.

1 MR. KAROTKIN: Can you give me one moment?

2 THE COURT: Sure.

3 MR. KAROTKIN: In the Order, sir?

4 THE COURT: No, it's in the -- it's actually one  
5 of the letters that contain the term. Across the top, it's  
6 page 34 of 73, document 340.

7 MR. KAROTKIN: Yes.

8 THE COURT: It's got a dispute resolution  
9 procedure, which I assume is a usual non-bankruptcy  
10 provision that's put in there. But any disputes relating to  
11 the fees with the retention have to be resolved here.

12 MR. KAROTKIN: I think we addressed that, Your  
13 Honor, in the proposed Order.

14 THE COURT: You have the revised Order?

15 MR. KAROTKIN: Yes.

16 THE COURT: May I see the revised Order?

17 MR. KAROTKIN: May I approach?

18 THE COURT: Yeah. Okay, you resolved the other  
19 issue as to the exoneration and limitation of  
20 (indiscernible). So I will approve the retention of Price  
21 Waterhouse. You can submit an Order.

22 MR. KAROTKIN: Thank you. We go now to the  
23 contested matters, Your Honor. The first item is the motion  
24 for relief of the stay, #9, filed by LL&E Royalty Trust.

25 THE COURT: Okay.

1 MR. HAMMER: Your Honor, Michael Hammer appearing  
2 on behalf of LL&E Royalty Trust. I'm from the law firm of  
3 Dickinson Wright. This is our motion for relief from the  
4 automatic stay to allow pending Texas State Court litigation  
5 to proceed. That litigation was filed by the Debtor in 2015  
6 to resolve continuing disputes regarding 1983 conveyance of  
7 an overriding royalty interest in certain leases of oil and  
8 gas wells located in Florida and Alabama. Under that,  
9 conveyance of trust was conveyed 50 percent of the generated  
10 net proceeds; the working interest holders control the other  
11 50 percent.

12 We believe this motion should be viewed in the  
13 context of the Debtor's prior motion to authorize to pay  
14 ongoing royalty interest at Docket #16, which was granted by  
15 this Court on June 15, 2016, pursuant to Docket 135. The  
16 Debtor made statements in that motion that are relevant to  
17 this dispute. They said proceeds from royalty interest are  
18 not property under the estate under 541(e)(6).

19 THE COURT: Does the conveyance say that they'll  
20 hold the special escrow fund in trust?

21 MR. HAMMER: The conveyance says you could earmark  
22 certain funds for special future costs, and that you either  
23 put it in an escrow or you treat it as if it were put into  
24 escrow, and they chose the latter and they put it in account  
25 called special costs escrow account.

1 THE COURT: Where was that in the conveyance?

2 MR. HAMMER: It is -- the conveyance is a little  
3 confusing on these points because it speaks of a special  
4 escrow, a special cost escrow. So I tabbed those pages --  
5 they are -- the one that talks about putting it in escrow as  
6 -- treating it as if it were put in escrow is Paragraph  
7 8(h).

8 THE COURT: Is there a number, a Bates number, on  
9 the bottom?

10 MR. HAMMER: Yeah. It is Bates 31 and it is of  
11 our 17 of 37.

12 THE COURT: I got it, okay.

13 MR. HAMMER: So in that motion there said it holds  
14 no legal title to the percent of production attributable to  
15 the royalty trust and holds any such funds solely for the  
16 benefit of the holder. And they did state as unclear if the  
17 automatic stay applies to an action to obtain possession or  
18 control over the royalty payments. In its response to this  
19 motion --

20 THE COURT: Even if your ownership is disputed?

21 MR. HAMMER: Well, correct, it's if -- we're  
22 entitled to 50 percent of the net proceeds. Instead of  
23 paying that, they're holding the funds. We say they have  
24 grossly estimated the cost that those relate to, and those  
25 are our property in payable to us.

1 THE COURT: But you said the automatic stay  
2 doesn't decline. And this sounds like it's essentially a  
3 contractual dispute in which if you're right, then the  
4 result might be that some portion of money that they're  
5 holding is your property or that they owe you a debt because  
6 they used some portion of your money under some other  
7 purpose.

8 MR. HAMMER: Well, but it's exactly the type of  
9 conveyance that the Debtor spoke of in its motion to approve  
10 royalty interest.

11 THE COURT: No, I don't understand the Debtor to  
12 be saying that if you're right, this isn't your property  
13 necessarily, but it still has to -- it's still essentially a  
14 contractual disagreement. In other words, you don't know if  
15 it's your property until you prevail on your contract claim.

16 MR. HAMMER: Right. Well, I'd say it's more than  
17 that. If we prove that we're right under the conveyance and  
18 those funds were always our property, so there's an escrowed  
19 set of funds, approximately \$18.3 million, and there's  
20 current net proceeds that are being generated is unclear  
21 what's going on. So when the Debtor claims in its response  
22 that the Trust is simply an unsecured creditor, it should  
23 just file a proof of claim, it has no interest in property  
24 and has no right to litigate its entitlement to these  
25 royalty proceeds. We disagree. We think that's what the

1 Debtor completely overlooks his royalty motion and --

2 THE COURT: But that's the only authority you've  
3 cited. In other words, that's why I asked you about the  
4 conveyance. Is there anything in the conveyance that  
5 requires them to hold the money in trust or makes it to a  
6 property or something like that, all you're citing is the  
7 royal motion. And my response is that your rights are still  
8 essentially based on a contract, and in order to prove the  
9 ownership, you would have to successfully litigate the  
10 contract claim. That's what I'm saying.

11 MR. HAMMER: Well, litigate semantics, but to us,  
12 it's more than a contract. It's a conveyance of real  
13 property and they are withholding it and holding the funds.  
14 So if we're right, then that's our property in that fund.  
15 But, go ahead.

16 THE COURT: No, they were speaking. I asked them  
17 to hold it down.

18 MR. HAMMER: If we're right, those are our funds  
19 and they're being held and there's additional funds being  
20 generated, and we claim an interest in that property. And  
21 to do nothing, to just say file a proof of claim, will not  
22 resolve the \$18 million that's being held in this special  
23 cost escrow account and that is being additionally  
24 generated. So it is different than just filing a proof of  
25 claim; it would not resolve the issue if we just filed a



1 proof of claim.

2 THE COURT: Tell me about the other claims you're  
3 seeking to pursue -- the tort claims, the conspiracy claims,  
4 and all those other things.

5 MR. HAMMER: There's a history here that's even  
6 beyond this Debtor where various parties were involved in  
7 various capacities. Some of them were prior working  
8 interest holders; some of them are a general partner of  
9 what's called a royalty partnership that's involved in this  
10 primarily for tax --

11 THE COURT: You could pursue those claims without  
12 the Debtor. Why would I grant your relief from the stay to  
13 pursue a tort claim against the Debtor?

14 MR. HAMMER: Because the primary claim is the  
15 money that is held by the Debtor that, if we're right, is  
16 our property.

17 THE COURT: Okay. But if you're telling me that  
18 the Debtor tortuously breached its contract, that's just a  
19 breach of contract claim, and I understand that claim. If  
20 you're telling me that the Debtor was involved in a  
21 conspiracy with prior working interest holders, that goes  
22 well beyond the contract that we're talking about.

23 MR. HAMMER: It is true in pleading this case in  
24 Texas, the State Court litigators did throw in a bunch of  
25 claims. But the primary claim that's driving this is to try

1 to get possession and control over what we view as our  
2 property that's being held in the special cost escrow, that  
3 is continuing to be generated today, and it is unclear what  
4 happened. So if we did nothing, just file a proof of claim,  
5 and we are right that they have and continue to this day  
6 every month generate these net proceeds without paying to  
7 us, there's \$18.3 million that suddenly isn't there, then  
8 they've converted our property, and the problem post-  
9 petition becomes, you know, a much more magnified to them.

10 We're just asking to have this dispute, allow it  
11 to be resolved because it's more than just a claim; there's  
12 actually money there that we claim entitlement to. And, you  
13 know, if you were to say, okay, I'm going to lift the stay,  
14 but I'm going to let you focus on control or interest in the  
15 property and any other damages, you know, were they awarded  
16 had to be dealt with in a plan or something like that,  
17 that's fine. But I do think the primary purpose of this is  
18 we've been -- in every year until they took over, we were  
19 getting multi-regular royalty events. We got \$300 million  
20 over 23 years. Once they took over, we never got another  
21 nickel. And so, you know, we do have to show that those net  
22 proceeds are properly payable for us that they've included  
23 improper costs in trying to calculate those.

24 I do believe, as the working interest holders,  
25 there's another 50 percent that they continue to receive.

1 We don't know that for sure, but it's not put in the escrow.  
2 So they're, in effect, being paid for their working  
3 interests, which includes managing these fields. This is,  
4 in a sense, a cost of their doing business. I mean, they're  
5 getting the other half of the 50 percent. We want our  
6 proceeds dealt with. And we think it's important and it  
7 certainly fits under the Sonnax factors that there's cause  
8 to do that.

9 You know, this litigation -- you're right, there's  
10 claims against -- the Debtor started this litigation. We  
11 filed counterclaims against the Debtor Plaintiff. We filed  
12 third-party claims against other Debtor entities that were  
13 involved in various capacities in this, as either prior  
14 working interest holders or operators. And we do have  
15 claims against six non-Debtors who were involved in various  
16 interest -- ConocoPhillips was prior, a working interest  
17 holder, is also general partner under -- and actually, they  
18 have three Counterclaims back.

19 We faced a situation where the Debtor says, well,  
20 it will just stay its action, but its action is not stayed  
21 right now. And our claims against the third-party entities  
22 and their claims back against us certainly are not stayed.

23 THE COURT: Debtor, okay.

24 MR. HAMMER: So the Debtor commenced this action.  
25 They just say, never mind. Well, I can see why they want to

1 say never mind, because they're holding our money. And, you  
2 know, why have it resolved and just leave it hanging out  
3 there. I don't see how -- it has to be resolved. And so,  
4 if we end up filing an adversary proceeding in front of this  
5 Court to say we need to resolve our interest in that  
6 property, then you would still have the Texas State Court  
7 proceeding with all the other claims without the party  
8 that's currently controlling the funds.

9 So just let me briefly put it into the Sonnax  
10 factors, if that's okay.

11 THE COURT: Sure, that's what we're here for, you  
12 know.

13 MR. HAMMER: I know, I know. Sonnax factors 1 and  
14 10, we believe, go hand in hand because stay relief would  
15 result in a full resolution of the issues, it would serve  
16 judicial economy. Only the Texas State Court can give the  
17 complete relief because this Court can't resolve the state  
18 law claims between the six non-Debtors. The Debtor's really  
19 only response to that is in our prayer for relief, we seek  
20 punitive damages, and the Texas State Court couldn't resolve  
21 the punitive damage issue. That, instead, should be  
22 reserved for the Bankruptcy Court.

23 We do think that is sort of the tail wagging the  
24 dog, and this case is about us getting possession and  
25 control over our royalty payments. And to the extent we get

1 an award greater than our property for royalties that were  
2 payable to us, I suppose if it was important to this Court,  
3 we could just come back and they could be identified if  
4 they're punitive damages in this award and the Debtor could  
5 deal with it in a plan as it wants to; but, ultimately, what  
6 we want is the money in escrow and the current money being  
7 generated subject to our interest.

8 So, otherwise, and there's a (indiscernible), we  
9 face an adversary proceeding and multiple lawsuits. They  
10 would, even if we brought the adversary proceeding here,  
11 they would have to monitor what's going on in the Texas  
12 Court.

13 So as to Sonnax factors 2 and 7, lack of any  
14 connection or interference with a case and no creditors to  
15 creditors. I mean, this is -- I refer to what the Debtor  
16 said in its royalty motion at Paragraph 28, "No creditors  
17 should be prejudiced by the requested relief as royalty  
18 payments are not property of the state and the Debtors have  
19 no right to distribute royalty interest to creditors."

20 So there's really two choices -- they can hold the  
21 funds or they pay us. But there's not a third choice where  
22 the Debtor just gets to keep the money. And as I indicated,  
23 there's probably a greater impact it'll do nothing and find  
24 out this is continuing on all during the case. The Debtor  
25 says, well, we're missing the point. There is an impact;

1 it's their cost to defend. But as I pointed out, we do  
2 believe this type of dispute, since they are getting  
3 compensated for the working interest, is inherent to the  
4 business. It's a cost of their doing business. Part of  
5 their working interest, they have to assume responsibility  
6 under these conveyances.

7 And to the extent we're dealing with post-petition  
8 action, the Sonnax says those do not implicate the purpose  
9 of the stay. As to the Sonnax factor 3, whether the other  
10 proceeding involves the Debtors of fiduciary, the Debtor  
11 says it doesn't. But it does, in its royalty motion,  
12 acknowledges when it holds funds attributable to the  
13 conveyance holder, it holds them for the benefit of another,  
14 and that is the primary kind of rationale behind is this  
15 factor met. It's not their money; they're saying, well,  
16 geez, it should be held for something else, but there's no  
17 circumstances where it really is theirs.

18 As a Sonnax factor 4, we know it's a Harris  
19 County, Texas State Court located in Houston.

20 THE COURT: Isn't it theirs to the extent that  
21 they can use it to pay these costs? In other words, when  
22 does it -- is it your money that they can use to pay costs;  
23 is that what you're saying?

24 MR. HAMMER: What they're saying is when we  
25 calculate to the net proceeds, there should be a deduction.

1 We can hold money for future costs. And so, these aren't  
2 really your net proceeds, but they're earmarked for these  
3 special costs. And just to put in a little bit of  
4 historical context, I mean, this conveyance was done in  
5 1983. Over a long period of time -- so you can -- I didn't  
6 put this in our papers. I just want to give a history and  
7 you can take it as that.

8 But there's only \$4 million over a long period of  
9 time that was ever escrowed, and half of it was half --

10 THE COURT: I've seen your papers.

11 MR. HAMMER: -- and half of it was funded by the  
12 working interest and half by us. And suddenly when they  
13 take over, it's a gigantic increase in these funds. So we  
14 think, and there was also prior litigation in which the  
15 whole overriding royalty interest -- not by this Debtor --  
16 but previously, was attempted to be terminated. So we're on  
17 edge about this and our money is sitting in the account.

18 So while the Harris County, Texas Court,  
19 technically not a specialized tribunal, certainly State  
20 Court in Texas sitting in Houston has experience in oil and  
21 gas issues.

22 Sonnax factor 6, does the action primarily involve  
23 third parties. We know the Debtor is very important, but a  
24 simple math of 6 of 10 are non-Debtor parties. Sonnax  
25 factor 8 is satisfied because any judgment claim would not

1 be subject to equitable subordination. Sonnax factor 9 is  
2 satisfied because the trust success in the underlying  
3 proceeding were not resolved and are avoidable judicial  
4 lien.

5 Then you get to Sonnax factor 12, the impact on  
6 the stay on the parties and the balances of harm. The  
7 Debtor chose this forum. It is the Plaintiff in the  
8 litigation. They acknowledge in a royalty motion that  
9 there's really no harm to the estate as these are not its  
10 funds. We're, in effect, litigating our money.

11 THE COURT: Yeah, but that's what you say. They  
12 say it's not your money, I guess.

13 MR. HAMMER: I don't think they say they could  
14 keep the --

15 THE COURT: Or they say they don't have to pay it  
16 to you. They can escrow it, use it for special other costs.

17 MR. HAMMER: Right, but it's not going to be. I  
18 don't understand them to say that it's going to be funds  
19 distributable in this bankruptcy case. It's either going to  
20 be used for costs related to those working interests or not.  
21 They've already filed an application to employ special  
22 counsel in this matter at Docket 357. And we believe -- and  
23 I'm wrapping up -- without stay relief, there would be  
24 continuing harm to us. We don't have the mechanism to deal  
25 with the recovery of the funds in the account or have those



1 issues resolved. This continues to go on every month post-  
2 petition without resolution.

3 And while they say they won't, they could continue  
4 the litigation, but we can't fully assert counterclaims and  
5 third-party claims against the Debtor parties, but just to  
6 say, oh, great, we'll stay as to everyone. It can't be  
7 stayed because there's the six non-Debtor parties, and we  
8 believe it'll be harmful to all the parties to have to deal  
9 with multiple avenues for this.

10 So at least two factors, Sonnax factor 5, whether  
11 the insurer assumes responsibility.

12 THE COURT: The litigation against the tort claims  
13 are very different. You're not litigating over your own  
14 money then. Those are money damage claims that you happen  
15 to join six or 10 parties in. But that's very different  
16 from the first claim you're describing, which is a claim  
17 where you say this is our property and you have to pay us.

18 MR. HAMMER: And I understand that. I understand  
19 the lawyers in the State Court in Texas would seek some type  
20 of injunctive relief to at least make sure the funds are  
21 held while the issue is being resolved. And if there's a  
22 way to carve that out that we deal with, you know, what are  
23 we entitled to as royalty payments, that would be something  
24 that is workable to us.

25 And then the last factor, 11, whether the parties

1 are ready for trial, that is not met. We are through the  
2 initial pleadings stage, all the claims, crossclaims, third-  
3 party claims, counterclaims have been filed, all the Answers  
4 have been filed in the cases ready to go. So we do believe,  
5 and we understand your concerns though that we have  
6 satisfied 10 to 12 Sonnox factors and we believe this issue  
7 needs to be resolved. And while it will take effort by the  
8 Debtor to do it in the context of this case since it won't  
9 resolve in distributable proceeds, the relief should be  
10 granted. Thank you.

11 THE COURT: Thank you.

12 MR. KAROTKIN: Stephen Karotkin, Weil, Gotshal &  
13 Manges for the Debtors. I think, Your Honor, you put your  
14 finger on it. This is a simple contract dispute.

15 THE COURT: It's not quite simple, I was just  
16 asking questions.

17 MR. KAROTKIN: Well, I think it is important.  
18 Who's entitled to money, it's a contract dispute. He  
19 admitted it was a contract dispute, he's cutting through it  
20 all. All they're seeking is money damages, and that is the  
21 primary claim.

22 THE COURT: See, that's what I'm trying to figure  
23 out, whether the dispute will result in a determination that  
24 that's their property, or the dispute will result in a  
25 determination that they have a claim against you like every

1 other prepetition creditor, at least to the extent that the  
2 prepetition (crosstalk).

3 MR. KAROTKIN: I think it's the latter. The claim  
4 is are they entitled to this money, who is entitled to the  
5 proceeds, are we obligated to pay them under the conveyance  
6 agreement. I think it's really that.

7 THE COURT: So you brought a claim in Texas, which  
8 would basically resolve that issue for a breach of contract.

9 MR. KAROTKIN: It's a declaratory judgment to  
10 resolve that issue.

11 THE COURT: So why not just go forward with it and  
12 decide that, which is obviously, they could assert a claim.  
13 They could say that it's our money, not yours. It's the  
14 same claim.

15 MR. KAROTKIN: Again, the normal procedure -- this  
16 is no different than any other type of claim.

17 THE COURT: Except you brought, you brought -- let  
18 me just finish. You brought a declaratory judgment  
19 proceeding, which if it's stayed, would resolve the same  
20 issue that the Defendant is raising, at least with respect  
21 to the contract rights -- put aside the tort claims for a  
22 minute.

23 MR. KAROTKIN: Prepetition, yes. Prepetition, we  
24 brought a declaratory judgment, and because this dispute was  
25 going on, it could have been -- it was a similar dispute was

1 brought by them previous to that time. It's no different  
2 than any other general unsecured prepetition claim. As  
3 you've noted -- actually, as you noted in the SunEdison case  
4 about an hour ago, and the appropriate procedure is not to  
5 have this management devote its resources to litigating  
6 simple prepetition contract rights in another forum.

7 THE COURT: How did you deal with your pending  
8 claim though in Texas? It's not stayed.

9 MR. KAROTKIN: We've agree to stay it. We agreed  
10 not to proceed.

11 THE COURT: Not if that judge says no, I'm not  
12 going to stay on; you filed it; or the other side objects  
13 and says, no, you shouldn't stay it, this should be  
14 resolved, basically making the same argument that was just  
15 made.

16 MR. KAROTKIN: First of all, I've never seen that  
17 happen. I can't imagine the Judge in Texas would entertain  
18 that type of a thing. It doesn't make any sense. The  
19 appropriate procedure --

20 THE COURT: When's the next hearing in Texas on  
21 this issue, do you know?

22 MR. KAROTKIN: No, I don't know. I mean, this  
23 litigation in Texas, despite what counsel said, this is in  
24 its infancy. This case was commenced in February -- in  
25 October of last year, I'm sorry. Discovery hasn't even

1 started. The case hasn't moved forward at all. There is no  
2 interest in judicial economy in having that case proceed in  
3 the State of Texas. The most efficient way, Your Honor, is  
4 the claims resolution process in this Court, and that you  
5 noted in the cases that they cited in (indiscernible). I  
6 mean, as I think you noted earlier, they haven't cited one  
7 case that supports what they are saying.

8 They cite your decision in New York Medical. And,  
9 as I'm sure you may recall, that case, you say, "A creditor  
10 holding a general unsecured claim files their claim in the  
11 Bankruptcy Court and the claim is deemed allowed, unless a  
12 party with standing objects." Objections are resolved in  
13 the Bankruptcy Court, and the claims objection process  
14 usually results in a liquidation of the allowed amount of  
15 the claim. As Judge Gerber noted, that's the most efficient  
16 way to do things. That doesn't distract the Debtor in its  
17 management to go pursue what may be, the way he describes  
18 it, complicated litigation in Texas, devoting their  
19 resources to that.

20 It's totally contrary to what Section 362 is  
21 designed to protect from the Debtor's perspective. There's  
22 no unfairness here. We've agreed not to pursue our claims.  
23 Our claims are simply the converse of their claims. It's  
24 exactly the same thing -- who is entitled to the money and,  
25 you know, they haven't satisfied their burden under the

1       Sonnax factors. As I said, they cases they cite, you know,  
2       either with cases that are ready for trial, cases where the  
3       Court lets summary judgment motion go forward. There's not  
4       one case that they cite which allows the stay to be modified  
5       in a situation like this, where the case is in its infancy.  
6       It's totally contrary to the statutory provisions.

7               And the fact that they say they'll commence an  
8       adversary proceeding in this Court, that's inappropriate.  
9       The process is file a claim like every other prepetition  
10      creditor. That's the appropriate procedure, that's the way  
11      the resolution process is efficiently administered. And  
12      there is nothing unique here about what they are seeking.

13             THE COURT: Okay, thank you. What I'd like to  
14      hear from the parties -- not today, I'll give you a chance  
15      to brief it -- is, and it's really directly in the first  
16      instance, I guess, at the movant, whether this is a case  
17      where you have a property interest in the funds that are  
18      being withheld or they're held in trust on some theory like  
19      that, or whether at the end of the day, all you have is a  
20      claim against the Debtor and this is just a prepetition  
21      breach of contract claim.

22             All right, I'll give you two weeks, and I want to  
23      hear more than the Debtors took a position of a royalty  
24      position. They have to refer to the documents themselves  
25      and any applicable law. I don't know if this is a common

1 way that these types of projects are wrong and as law in  
2 Texas, in terms of what your interest is in that escrow  
3 funds under the contract. I'll give you two weeks to submit  
4 simultaneous briefs.

5 I mean, in the interim, if the Texas Court  
6 decides, yeah, I'll just stay everything, I'd certainly like  
7 to know that also. Whether the Texas Court is going to  
8 forward at least on the contract claim, which the Debtor  
9 brought, I'd like to know that also.

10 MR. HAMMER: Thanks.

11 THE COURT: Next? Financing, I think?

12 MR. KAROTKIN: Yes, the next item, Your Honor, is  
13 #10 on the agenda, which is the final hearing on the Debtor-  
14 in-possession financing. And let me just give you, if I  
15 may, some quick background.

16 THE COURT: Okay.

17 MR. KAROTKIN: The only objection that was filed  
18 to the approval of the Debtor-in-possession on a final basis  
19 was by the creditor's committee. That was several weeks  
20 ago, prior to the last hearing we held that was basic --  
21 where another interim Order was entered. As you may recall,  
22 responses to that objection were filed by both the Debtors  
23 and the DIP lenders, and I think, as set forth in the  
24 response that we filed a day or two ago. And we're pleased  
25 to report, and I think that counsel for both the committee

1 and the DIP lenders can confirm that all but one of the  
2 issues raised in the objection filed by the creditor's  
3 committee have been resolved.

4 Yesterday, we filed with the Court a form of  
5 proposed final revised DIP Order that reflects the  
6 resolution of those issues, together with a blackline  
7 against the amended interim DIP Order that was entered by  
8 the Court. I believe you should have copies, but we can  
9 hand it up to the Court.

10 THE COURT: Maybe on the next.

11 MR. KAROTKIN: You have both?

12 THE COURT: Let me just see if I have it. Which  
13 tab was it in your book, do you know?

14 MR. KAROTKIN: Ten, and then there are letter tabs  
15 with the various pleadings.

16 THE COURT: Do you know what binder it is?

17 MR. KAROTKIN: Is it L?

18 THE COURT: All right, I know what the --

19 MR. KAROTKIN: Yes, it's L.

20 THE COURT: Okay.

21 MR. KAROTKIN: Would you like a --

22 THE COURT: I have it.

23 MR. KAROTKIN: -- color copy?

24 THE COURT: I got it. And the unresolved issues  
25 are the committee standing and their right to -- its right



1 to take 2000 toward discovery.

2 MR. KAROTKIN: Yes. We can leave that, or we can  
3 address that now if you would like. Mr. Neier representing  
4 the DIP lenders can take you through the changes, and if you  
5 have any questions.

6 THE COURT: I believe leave the changes; I don't  
7 have a problem with the changes, so let me just hear on  
8 those two unresolved issues.

9 MR. KAROTKIN: As we've set forth in our  
10 responsive pleading, Your Honor, we see no reason why the  
11 committee should not be put to its burden to demonstrate  
12 cause for derivative standing or for the taking of 2004  
13 examination.

14 THE COURT: So they're a party in interest taking  
15 from 2004 exams, so just have to make an application.

16 MR. KAROTKIN: To make an application. They're  
17 seeking authority to do that without making an application.  
18 And in order to, you know, as I'm sure you're aware, there  
19 are certain requirements, as we've set forth in our  
20 pleadings, as to the cause. It has to be demonstrated in  
21 connection with both derivative standing and authority to  
22 take 2004 examinations. We don't think that that should be  
23 automatically dispensed with here. I think that following  
24 those procedures enables Your Honor to be a gatekeeper to  
25 determine whether assets of the estate should be utilized to

1 pursue those types of claims or discovery.

2 THE COURT: Can I ask a question?

3 MR. KAROTKIN: Yes.

4 THE COURT: If you didn't have the Stipulations in  
5 the paper and the Debtor would do the -- who could bring the  
6 claims that the committee is start to bring. I wouldn't be  
7 acting as a gatekeeper. You wouldn't have to ask me for  
8 permission to do it, would you?

9 MR. KAROTKIN: The Debtor wouldn't no. The Debtor  
10 would have to ask permission for the 2004 examinations.

11 THE COURT: Okay. But let's talk about the  
12 standing to assert claims. But isn't the Debtor really  
13 giving up that ability in this Order by stipulating to these  
14 issues?

15 MR. KAROTKIN: Two things, Your Honor. First, the  
16 Debtor didn't --

17 THE COURT: And if the answer is yes, so who's the  
18 estate representative?

19 MR. KAROTKIN: Let me address that, two answers.  
20 Number one, the Debtor didn't entirely give up the right to  
21 challenge the liens; in certain areas, they have full rights  
22 with respect to the hedge proceeds. Second --

23 THE COURT: Yeah, but that's -- you know, I looked  
24 at your -- in Paragraph 16, where you basically admit to the  
25 extent and validity of the liens.

1 MR. KAROTKIN: Yes, Your Honor, after we did due  
2 diligence and reviewed all of the papers, did a thorough  
3 examination of perfection issues. We just didn't do it  
4 willy nilly because they asked us to do this. And I think  
5 that in view of those circumstances, the Debtor has a  
6 fiduciary. The Debtor didn't do this lightly.

7 THE COURT: We're not far away from the GM case,  
8 mistakes were made.

9 MR. KAROTKIN: Mistake, yes.

10 THE COURT: And it happens.

11 MR. KAROTKIN: And they can come into Court and  
12 they can simply demonstrate why they think it's appropriate  
13 to move forward before they embark on a course of action  
14 that will obviously incur substantial costs and expenses.  
15 All we're asking is, like in any other case, they come  
16 before you and say this is the reason they want to do this.  
17 And if they have cause, it ought to be easy. But to  
18 automatically grant them standing just doesn't seem  
19 appropriate.

20 THE COURT: Okay, thank you.

21 MR. LEBLANC: Good morning, Your Honor. Andrew  
22 Leblanc, Milbank, Tweet, Hadley & McCloy, on behalf of the  
23 committee. Your Honor, we, I think, followed Your Honor's  
24 lead in both AOG and SunEdison, SunEdison where Weil,  
25 Gotshal represents the committee. Your Honor, I think in

1 both of those cases, sua sponte required that the committee  
2 be granted standing as part of the cash collateral Orders or  
3 the DIP Orders there. And we do think it's appropriate, and  
4 Your Honor is a gatekeeper as a trial judge in any event.  
5 To the extent that we bring claims, there will --

6 THE COURT: I'm also passing on fees.

7 MR. LEBLANC: I'm sorry? And you're also passing  
8 on fees. You're a gatekeeper in both of those  
9 circumstances. So you will decide whether the claims are  
10 colorable, as required under default, and Your Honor will  
11 also decide on whether or not we're entitled to be paid  
12 administrative expenses for having brought those claims.

13 So we don't think anything more is necessary with  
14 respect to the standing, and Your Honor I think has done  
15 this twice in the very recent past, which was why we thought  
16 it was appropriate here. And it is, there's a timing  
17 element, although what they've drafted does hold the  
18 investigation period if we file a motion for standing. But  
19 we think it's an unnecessary administrative expense to  
20 burden the estate with the process, given the fact that  
21 Paragraph 16 waivers that the Debtors give, from A through  
22 D, are as extensive a waiver -- they carve out one  
23 particular set of collateral.

24 But with the exception of that, with any other  
25 claims, they've completely waived them. They've released

1       them, they've waived them, they've stipulated to them, so  
2       they've done everything you could possibly do. So we think  
3       it's an appropriate exercise of the Court's discretion to  
4       allow us standing to the extent that we believe there's a  
5       claim to bring.

6               With respect to the Rule 2004, Your Honor also did  
7       that in SunEdison. And, Your Honor, we think that's  
8       appropriate for an even more important reason, which is that  
9       doesn't toll the time for us to conduct our investigation.  
10      So to the extent that we have to take Rule 2004 and we have  
11      to first come to the Court and ask for permission, then that  
12      consumes a period of time. Now let me be clear, and I think  
13      Your Honor can take note of this, we have not filed the Rule  
14      2004 motion yet. We expect and hope that we won't have to  
15      ever do that. We have been getting cooperation at the very  
16      -- within days of us being retained.

17             THE COURT: So you're saying that you recognize  
18      you're going to have to file a motion to take a 2004 exam,  
19      which is apparently, the Debtor interprets the Order to say  
20      you can just simply start serving exams. What are your  
21      requests?

22             MR. LEBLANC: Well, this is what I -- the point  
23      I'm trying to make, Your Honor, is we're not going to  
24      unnecessarily seek formal 2004 discovery if we don't have  
25      to. We have, from the beginning of the case, we served the

1 Debtors with an informal document request. After some time,  
2 we got better information flow from them. We've been able  
3 to do our investigation on a cooperative basis. We've had  
4 the same cooperation from the lenders.

5 And so we aren't going to seek formal 2004  
6 discovery, service subpoenas, and things like that, unless  
7 we believe we have to. We could have because we, today,  
8 don't have an Order that allows us to come in -- or we don't  
9 have an Order that says we don't have to seek authority to  
10 bring a 2004 motion. But the point I'm making, Your Honor,  
11 is that we're not going to do that unless -- we're not going  
12 to seek formal discovery unless we conclude that we really  
13 need it.

14 THE COURT: But Mr. Karotkin said that even if the  
15 Debtor was the appropriate party, you would still have to  
16 seek authority pursuant to Rule 2004, I guess, every time  
17 you wanted to take a 2004 exam.

18 MR. LEBLANC: In the absence -- well --

19 THE COURT: Which is what a Trustee normally does.

20 MR. LEBLANC: No, I understand, in this  
21 jurisdiction, Your Honor. In the Third Circuit, as example,  
22 there's a standing Order that says you -- that dispenses  
23 with the requirement to seek authority.

24 THE COURT: Ah, but we're not in the Third  
25 Circuit.

1 MR. LEBLANC: I understand, Your Honor, I  
2 understand. And, importantly, we're not asking for this  
3 relief from the requirement to seek authority to serve 2004  
4 discoveries for everybody, but rather just for us. We're  
5 working within a limited period of time. We don't want that  
6 period of time to be consumed by the need to come to Court  
7 on what -- if and when we choose that we have to do it  
8 because there isn't cooperation forthcoming and there has  
9 been to date. But to the extent that that changes and we  
10 need to come, we just don't want to burden the Court and the  
11 estate with the administrative expense of coming and seeking  
12 authority from the Court do so solely with respect to an  
13 investigation that, as Your Honor has noted, we're the only  
14 ones who are conducting it at this point, the Debtor isn't.

15 So we'd ask, Your Honor, that you make those two  
16 modifications to the Order. And I will say that we thank  
17 the parties for working with us to resolve all the other  
18 objections and leaving just this issue to be resolved with  
19 the Court. Thank you, Your Honor.

20 MR. NEIER: David Neier on behalf of Wells Fargo.  
21 Good morning, Your Honor. A couple of things; first of all,  
22 we're cooperating with both the Debtors and the committee in  
23 their separate investigations. The Debtors have made  
24 document requests of us and information requests of us in  
25 lieu of 2004. With respect to the committee, I think we've

1 turned well over 5000 pages of document so far, even prior  
2 to the entry of this Order, and we've been doing that on a  
3 rolling basis and we're going to continue to roll it. They  
4 haven't given us a request; we just started producing all  
5 the lien and security and what-have-you documents. As we  
6 get them, they're getting them.

7 And with respect to standing, the Debtors have  
8 really reserved on two issues. As you may recall, Mr.  
9 Schrock in his first day said that there are certain  
10 unencumbered assets; he estimated approximately \$50 million  
11 worth of unencumbered assets. The DIP Order actually says  
12 that the liens are substantially valid, but it doesn't say  
13 they're all valid because the Debtor said they could not  
14 attest to that. So they are following up on two issues,  
15 that and the hedge proceeds.

16 So if Your Honor is going to do anything on  
17 standing, I don't think you should divest the Debtors of  
18 their standing, as is typical in a standing motion, because  
19 they are following up with things and they feel very  
20 strongly about it. And the hedge proceeds, which are, what,  
21 approximately \$450 million?

22 THE COURT: That's correct.

23 MR. NEIER: The \$450 million, which Wells Fargo  
24 assets is its collateral and should be paid down on the  
25 first lien debt, is a critical, critical factor in this



1 case; in fact, probably one of the most important factors in  
2 terms of any reorganization efforts that are going to take  
3 place in this Court and are the subject of intense  
4 negotiations. It would be highly inappropriate for the  
5 Court to divest the Debtors of the standing with respect to  
6 that.

7 THE COURT: What was the other issue that you said  
8 is --?

9 MR. NEIER: They have asserted that certain assets  
10 are unencumbered. They have asserted that certain property  
11 is unencumbered, and the DIP Order reflects that.

12 THE COURT: Okay.

13 MR. NEIER: Thank you, Your Honor.

14 THE COURT: Thank you. Does anyone else want to  
15 be heard?

16 MR. MARCUS: Thank you, Your Honor. Christopher  
17 Marcus from Kirkland & Ellis on behalf of the ad hoc second  
18 lien committee. Two brief points, first is the gatekeeper  
19 function. The standard here is that the Debtors are  
20 unjustifiably failing to prosecute. I'm not aware of the  
21 reason for the sua sponte grant of standing in the SunEdison  
22 case, but all I've heard from the creditor's committee is  
23 that the Debtors have stipulated, which is a fact that is  
24 consistent with virtually every Chapter 11 case.

25 THE COURT: That's right, that I take it that way.

1 It's what they have to do to get the money.

2 MR. MARCUS: Well, the Debtors did an  
3 investigation. The standard is not that the Debtors are  
4 failing to prosecute; it's that they're unjustifiably  
5 failing to prosecute. The creditor's committee has to  
6 demonstrate colorability, and they have to demonstrate from  
7 a cost benefit perspective that it makes sense to grant them  
8 standing to allow them to pursue the claims and causes of  
9 action.

10 And it's not just, counsel mentioned that this was  
11 just sort of they don't want to go through the  
12 administrative burden of filing that motion. I just spent  
13 15 or 17 days in front of Judge Chapman on a standing motion  
14 in the Sabine case that cost tens of millions of dollars,  
15 went up to the District Court. The District Court affirmed  
16 that was a real material factor in the case, that was a real  
17 issue in the case. And the inability of the creditor's  
18 committee to get standing because they couldn't satisfy that  
19 burden was very important for the Debtors. I don't see this  
20 as just an administrative step.

21 So unless there's some other reason for what Your  
22 Honor might conclude that the Debtors have unjustifiably  
23 failed to prosecute, I think the creditor's committee needs  
24 to be put to their burden under STN, have to demonstrate  
25 colorability, and they have to demonstrate cross-benefit.

1 THE COURT: Okay, thank you.

2 MR. MARCUS: Thank you, Judge.

3 THE COURT: Anyone else before I hear from the  
4 Debtor?

5 MR. KAROTKIN: Just briefly, Your Honor. First of  
6 all, this is not the SunEdison case, as I'm sure you know  
7 better than anyone. In SunEdison, there were allegations of  
8 fraud, there was a rollup of the DIP, there were many  
9 allegations.

10 THE COURT: Well, there's (indiscernible)in this  
11 case, and I'm not sure that is really part of your  
12 admission, that insider's traded on, or essentially traded  
13 on inside information.

14 MR. KAROTKIN: Putting aside the fact there's no  
15 basis for those allegations.

16 THE COURT: Well, that's not what the --

17 MR. KAROTKIN: That's not --

18 THE COURT: It's a very limited stipulation. It's  
19 limited to really what the first lien lenders -- or what the  
20 prepetition lenders did or didn't do.

21 MR. KAROTKIN: I agree with that. But there's no  
22 reason why --

23 THE COURT: So why shouldn't the committee if it  
24 discovers that somebody didn't file a UCC or terminated a  
25 security interest, as we know, happens, be in a position to

1 bring that lawsuit; why do they have to come to me?

2 MR. KAROTKIN: Because maybe they're wrong, and  
3 maybe, like every other party, they should be subject to the  
4 same burdens that every other party in a Chapter 11 case is  
5 subject to. And if they're right, it's pretty easy to file  
6 a motion and get a hearing before the Court so that the  
7 Court and other parties' interests can weigh in on whether  
8 that's an appropriate expenditure of the estate's funds and  
9 resources.

10 The other factor to be considered, Your Honor, is  
11 that if they are granted automatic standing to do what they  
12 -- any type of lawsuit related to the challenge period,  
13 deprives the Debtor the right to settle that type of  
14 lawsuit. And I think that would be totally inappropriate,  
15 and those are the types of factors that have to be  
16 considered before a unilateral standing is granted.

17 THE COURT: I would say that an estate  
18 representative of the committee would have the authority on  
19 any claim that it asserted within that representation of the  
20 settlement.

21 MR. KAROTKIN: Again, but does that deprive the  
22 Debtor of the ability to settle it, and shouldn't those  
23 issues come before the Court at the appropriate time so the  
24 Court can decide on what basis will standing be granted or  
25 not be granted. It's very simple. You're available, you

1 file a motion like everybody else.

2 THE COURT: But you've already settled, as far as  
3 the Debtor's concerned, you settled the claims against the  
4 prepetition members, other than the couple of issues that  
5 you have yet to, subject to a 90-day lookback period for  
6 other parties and interests. You've made your settlement.

7 MR. KAROTKIN: Okay. So what is the burden on  
8 them to come forward with something to demonstrate why the  
9 assets of this estate should be devoted to a lawsuit? Let  
10 them come in and show why. It's very simple. If there's a  
11 legitimate basis to do so, you'll grand them standing.

12 THE COURT: Anything else?

13 MR. NEIER: One very minor point, Your Honor,  
14 David Neier.

15 THE COURT: What is this, (indiscernible)?

16 MR. NEIER: No, just one very minor point. You  
17 say it's subject to a 90-day lookback period, but we're not  
18 fussy about the time. And we've said that if they file a  
19 standing motion, the time would automatically be tolled from  
20 that day forward. So it's really, there is no time limit.

21 THE COURT: Is that what the Order provides, that  
22 you have to file a standing motion with 90 days?

23 MR. NEIER: Correct.

24 THE COURT: Or you have to file a Complaint within  
25 90 days?

1 MR. KAROTKIN: No, just the motion for standing.

2 MR. NEIER: Just a motion for standing, so that  
3 they can file a motion for standing tomorrow and the 90-day  
4 limit is gone. And that was a negotiated part of the Stip  
5 Order.

6 THE COURT: I don't need to hear anymore, okay.  
7 One of the reasons I usually require, before I grant the  
8 committee the status of an estate representative and  
9 standing in these Orders, is that the action usually has to  
10 be commenced under these Orders within the period. And you  
11 can say you can file a standing motion and you can get  
12 before the Court, there's inevitable delay depending on the  
13 Court's calendar and availability. But as long as all you  
14 have to do is file the motion within the period and not  
15 close the period, you know, I think that is satisfactory.

16 You're certainly entitled -- I wouldn't, by the  
17 way, I wouldn't grant you standing necessarily or it's a  
18 different situation with respect to issues on which the  
19 Debtor did not. But, I mean, the Debtor has really only  
20 waived the claims against the prepetition lenders. And from  
21 what I've been reading in the various papers and other  
22 matters, there may be other claims that the Debtor hasn't  
23 counted on. But how do they investigate? There's this 90-  
24 day investigation period. If they can't serve 2004 Orders,  
25 how do they investigate?

1 MR. NEIER: First of all --

2 THE COURT: (indiscernible) the committee in a  
3 separate position than somebody who comes in and wants to  
4 bring a lawsuit, this committee's got statutory and  
5 fiduciary duties.

6 MR. NEIER: First of all, as they acknowledge,  
7 they are investigating, they're getting cooperation. And,  
8 again, if they need to take a 2004 examination, they can  
9 come to the Court. And we will represent to the Court that  
10 from the Debtor's perspective, we're more than happy to  
11 waive the 90-day period or whatever it is pending the  
12 resolution of the 2004 examination.

13 THE COURT: It's not your period to waive. You're  
14 not the object to these claims.

15 MR. NEIER: In terms of timing?

16 THE COURT: It's not yours to waive. They're not  
17 going to sue you; they're going to sue the banks or whoever.

18 MR. NEIER: But it's our DIP Order as well.

19 THE COURT: And by the way, one point to consider  
20 this for the future. I was told that you did all these  
21 investigations, there's no allegations in your application  
22 relating to the examinations you've conducted or what you  
23 did. And as we all know, mistakes are made.

24 MR. NEIER: They are, Your Honor, but as a matter  
25 of professionalism, that's what we do at our law firm.

1 THE COURT: I know what I read and I don't know  
2 what I don't read. So I will -- I'll sign the Order as  
3 proposed, as long as anything you stayed should the  
4 committee file a claim or an application for STN, which I  
5 guess can go beyond the waivers that are in the Order.

6 MR. NEIER: Thank you, sir.

7 MR. KAROTKIN: Your Honor, with respect to the  
8 2004, though.

9 THE COURT: You're going to have to submit an  
10 application if you tell me you're looking at a lien, and you  
11 can accompany that with a motion to extend the term if  
12 you're looking at certain information and somebody's not  
13 giving it to you, although it sounds like the prepetition  
14 lenders are giving you the information, and I don't know  
15 what other claims you're going to examine into.

16 MR. LEBLANC: I wouldn't expect that we would be  
17 filing a 2004. If Your Honor does agree, we're not likely  
18 to do it unless we have to; we're not going to do it unless  
19 we have to, and I hope we get cooperation. And, obviously,  
20 Your Honor, the investigation period only applies to the  
21 prepetition lenders. So to the extent that we're  
22 investigating other claims, that period of time is  
23 inapplicable to those claims.

24 THE COURT: Okay, thank you. Yes, sir.

25 MR. MORRISSEY: Your Honor, once again, Richard



1 Morrissey. I just wanted to correct the record and provide  
2 the Court with an update regarding the Felicia Pierce  
3 matter. The Summons actually --

4 THE COURT: Is she dismissing here?

5 MR. MORRISSEY: Yes, she has agreed to sign the  
6 Stipulation, which we will present to the Court to be so  
7 ordered. But I just wanted to correct the record. The  
8 Summons in that adversary proceeding has been issued.

9 THE COURT: It has been issued. What's the  
10 pretrial conference date we have, do you know? We can just,  
11 we'll just, we'll move the pretrial conference up today.

12 MR. MORRISSEY: Set for September 29th.

13 THE COURT: Okay, we can go back to  
14 (indiscernible).

15 MR. MORRISSEY: Thank you, Your Honor.

16 THE COURT: Just remember, I have to write her a  
17 letter. Let me deal with the sealing motion that I  
18 received. I got the sealing motion, and I looked at the  
19 list. And none of the reasons for the sealing motion was  
20 that it would disclose the names of employees. There are no  
21 names.

22 MR. KAROTKIN: I realize that, sir, but you can  
23 tell -- it's easy to extrapolate, for other employees to  
24 extrapolate from the titles who they would be.

25 THE COURT: Even if you remove the locations, they

1 can still tell?

2 MR. KAROTKIN: Yes, that's what we're told, yes.

3 And that would not be good information to have available to  
4 the employees.

5 THE COURT: Tell me why it's bad to have that  
6 information public.

7 MR. KAROTKIN: Because generally, the employees  
8 don't like their salary information public. And for other  
9 employees to see what others in the firm are making causes a  
10 lot of consternation.

11 THE COURT: All right, counselor, I'll grant the  
12 motion.

13 MR. KAROTKIN: Thank you, sir.

14 THE COURT: Even though you hadn't (indiscernible)  
15 it. Go ahead.

16 MR. KAROTKIN: By way of background, the motion  
17 was filed on July 27th, and the motion seeks approval of  
18 three employee programs, the first being a KERP program  
19 covering --

20 THE COURT: Excuse me. Go ahead.

21 MR. KAROTKIN: Yes, the first program, Your Honor,  
22 is what we call the KERP program covering approximately 580  
23 essentially rank-and-file-type employees. The second  
24 element is what we call the KEP, K-E-P, program covering 111  
25 employees. Those employees are the more administrative, had

1 functions such as accounting, marketing, human resources,  
2 environmental compliance, engineering. And the last program  
3 the KEIP, K-E-I-P program, which covers the Debtors for  
4 senior executives. Each of those programs is described in  
5 quite detail in the motion.

6 As we noted in the responsive pleading, Your  
7 Honor, that we filed yesterday, the Debtor's first and  
8 second lienholders have no objection to the relief requested  
9 in the motion. Also, as noted in that reply, Your Honor,  
10 after consultation with the creditor's committee and in  
11 order to provide the creditor's committee with additional  
12 time to discuss certain aspects of both the KEP program and  
13 the KEIP program, the Debtors and the committee have agreed  
14 to the terms of a proposed revised Order, which would  
15 approve the KERP program, would approve the second quarterly  
16 payment only under the KEP program, which would be for the  
17 period ending June 30th, would adjourn consideration of the  
18 relief requested with respect to the balance of the KEP  
19 program and would adjourn consideration of the entire KEIP  
20 program.

21 We did submit a proposed revised Order to the  
22 Court and filed it on the docket, and I could hand it up to  
23 Your Honor.

24 THE COURT: What's the letter tab after this? I  
25 have it back here --

1 MR. KAROTKIN: 12, I think, or 11(b).

2 THE COURT: I'll check if I have it. Has the U.S.  
3 Trustee seen the revised Order?

4 MR. KAROTKIN: Yes.

5 THE COURT: And basically the proposal is to  
6 adjourn the KEIP for the day, to approve the KERP, and to  
7 approve the KEP, but only up to the second quarterly  
8 payment. So why don't we focus on those. Let me start with  
9 the KERP. Is there any objection from the U.S. Trustee to  
10 the KERP? I don't know if you've seen the --

11 MS. GOLDEN: Yes, Your Honor. For the record,  
12 Susan Golden from the U.S. Trustee's Office. Yes, Your  
13 Honor, we've seen all the information that the Court has  
14 received in its unredacted form. We have no objection to  
15 the, I think it's for the general rank-and-file KERP program  
16 and we have received the information on the rank-and-file  
17 incentive program. And I think that our objection was  
18 really an information to objection overall. So if the Court  
19 is satisfied that Your Honor has received the information  
20 necessary in order to make a determination as to whether the  
21 participants are not insiders and whether the plan is truly  
22 incentive, then the U.S. Trustee defers to the Court.

23 THE COURT: Which is the plan that implicates the  
24 relative?

25 MR. KAROTKIN: The KEP.

1 THE COURT: The KEP, all right. Let me start with  
2 the KERP then. I've reviewed the KERP. It does not appear  
3 to have any insiders involved in it. It's consistent with  
4 the Debtor's prepetition practices. It was then and is now  
5 and is now an appropriate exercise of business judgment and  
6 justified by the facts and circumstances of the case, so  
7 I'll approve the KERP.

8 MR. KAROTKIN: Thank you, sir.

9 THE COURT: The two plans. Now let's get onto the  
10 KEP.

11 MR. KAROTKIN: We can actually --

12 THE COURT: Let me just hear from the U.S. Trustee  
13 before we --

14 MS. GOLDEN: Thank you, Your Honor. You know, as  
15 I said a moment ago, our objection was really informational.  
16 And we felt that it was important for the Court to see the  
17 information that the U.S. Trustee had received. The Debtor  
18 has actually added additional information and an additional  
19 declaration from the Debtor's CFO. But, you know, it was  
20 important that Your Honor, who was an independent duty under  
21 Section 503, received the information to make a  
22 determination as to whether there are insiders and whether  
23 the KEP is truly an incentive plan.

24 THE COURT: What if there are no insiders; what  
25 difference does it make?

1 MS. GOLDEN: Well, the issue really is whether or  
2 not it's an incentive plan.

3 THE COURT: So could it be a mixed retention, and  
4 I don't even have to be facetious because part of it is a  
5 retention plan.

6 MS. GOLDEN: No question.

7 THE COURT: And part of it is an incentive plan.

8 MS. GOLDEN: No question.

9 THE COURT: Even the Debtor says it's largely --  
10 three times -- largely an incentive plan, which means more -  
11 -

12 MS. GOLDEN: I mean, Debtors often say that. You  
13 know, Debtors often say that. So, you know, that's neither  
14 here nor there. That's what Debtors, you know, that's what  
15 Debtors often say. One of the issues that came up in the  
16 reply that was not in the motion was the standard of review  
17 of who the possible insiders could be. The U.S. Trustee  
18 still takes the position that the corporate definition is  
19 the appropriate one because the Debtor's general partner is  
20 a corporation.

21 THE COURT: Well, the lender is a separation of  
22 the Board of Directors.

23 MS. GOLDEN: Board of Directors, which are  
24 corporate concepts, not partnership concepts.

25 THE COURT: I agree you can --

1 MS. GOLDEN: You know, the compensation committee  
2 was appointed to the board.

3 THE COURT: So do you object to the KEP  
4 (indiscernible)?

5 MS. GOLDEN: It's not an objection to the KEP in  
6 concept. It really was informational so that the Court  
7 could make the determination as to what standard applies and  
8 whether or not there are insiders. I do also note for the  
9 record that aside from the gentleman who is the CEO's  
10 brother, there are, I think, four or five other KEP  
11 participants who were appointed directly by the Board of  
12 Directors. Your Honor did say in SunEdison that that is a  
13 factor that Your Honor would consider.

14 Also, we just want to note that while the amounts  
15 -- the average amounts per employee in connection with the  
16 KEP are set out in the motion. Obviously because something  
17 is an average, mathematically some people are earning less,  
18 some people are earning significantly more. But, in  
19 essence, you know, that's really where we are, that Your  
20 Honor had all the information that was necessary to make a  
21 determination as to the standard and the attribute of the  
22 participants.

23 THE COURT: By the way, you didn't mention Mr.  
24 Karotkin, but I think the discretionary fund issue is also  
25 being moved over to a later date?

1 MR. KAROTKIN: No, that is not.

2 MS. GOLDEN: We also have an issue on the  
3 discretionary fund because they standards and criteria have  
4 not been set forth, and it's a million dollars and that's a  
5 lot of money.

6 THE COURT: This is for the KEP?

7 MS. GOLDEN: It's for the KEP and the KERP. It's  
8 just for those employees.

9 THE COURT: So what are the standards for the  
10 discretionary fund, other than discretion, which I know is a  
11 very loose standard.

12 MR. KAROTKIN: Your Honor, the discretionary fund,  
13 as we've indicated, is merely a way to address promotions  
14 within the KERP and the KEP. It's not for the KEIP, it's  
15 very clear, promotions for new hires so that they can be  
16 treated in the same fashion. It's not to provide --

17 THE COURT: To new hires, you mean not the people  
18 on the list?

19 MR. KAROTKIN: If we hire someone tomorrow, a new  
20 hire, so that they can be appropriately compensated as well  
21 in the same basis that the other employees are compensated.  
22 That's all, I mean, it's a fairly common practice. As we've  
23 noted in our reply, it's generally assumed in many, many  
24 other cases so that management has the discretion and  
25 ability to compensate people appropriately, you know, within



1 the confines of the general compensation practices of the  
2 company.

3 THE COURT: Let me raise an issue, two issues I  
4 have with the KEP. It looks to me like it's partially  
5 retentive and partially incentive, because -- I'm looking at  
6 Page 12, I guess, in the motion. And it'd be beneficiary to  
7 the program, earn 60 percent of the award for missing all  
8 the partners.

9 MR. KAROTKIN: That's correct.

10 THE COURT: And that sounds like a retentive only.

11 MR. KAROTKIN: Although there were other -- there  
12 were incentive elements in terms of personal performance  
13 metrics and things like that. But, yes, if we're on target,  
14 they still would get something.

15 THE COURT: And assuming at least that portion is  
16 retentive, you have the brother of an insider. And I've  
17 heard Ms. Golden that the way you sent to partnership.

18 MR. KAROTKIN: It still applies in a partnership  
19 anyway.

20 THE COURT: I know, but for governance purposes,  
21 it looks like a corporation. It's got a Board of Directors.

22 MR. KAROTKIN: Again, that would apply in either  
23 case, so we're not trying to abruptly --

24 THE COURT: And I have an issue because I don't  
25 know enough about these four or five employees that are

1 appointed by the board, which start to sound like an  
2 officers, regardless of what their title is and I don't know  
3 anything about their duties.

4 MR. KAROTKIN: Well, I think, Your Honor, that we  
5 did file --

6 THE COURT: Well, did you file --

7 MR. KAROTKIN: We did file the file of Mr.  
8 Jackson, which addresses all of the participants in the KEP.

9 THE COURT: I think I'd like a little more -- I  
10 mean, the insider issue is not going to go away in terms of  
11 the brother. The brother is clearly an insider, so he's an  
12 insider under the code. It doesn't matter what his duties  
13 are because his status is not based on what he does; it's  
14 based on what the brother does.

15 MR. KAROTKIN: Well, again, yeah, Mr. Jackson's  
16 declaration did address the insider status of every person  
17 included in the KEP.

18 THE COURT: Is this #4 -- Document 414?

19 MR. KAROTKIN: Yup, 412.

20 THE COURT: Is that in your book?

21 MR. KAROTKIN: Should be. I can hand you up  
22 another copy.

23 THE COURT: What's the number on top? I just have  
24 one document, an 84-page document, and I have --

25 MR. KAROTKIN: The document is 412. I could hand

1 you up a copy.

2 THE COURT: Okay, all right.

3 MR. KAROTKIN: In Paragraph 7 and 8, I think  
4 address the issue that your concerned with as to all the  
5 participants, which would include the ones you mentioned.

6 THE COURT: Yeah, but, you know, these are just  
7 conclusory statements. If you go back and look at what I  
8 was given in SunEdison, it was a confidential affidavit and  
9 declaration, but it really told me who the people were, what  
10 they did, and who they reported to.

11 MR. KAROTKIN: Well, we can certainly supplement  
12 the record with that as to those five individuals.

13 THE COURT: Well, what I was going to suggest is  
14 the following. I don't have a problem with the incentive  
15 portion of the KEP, and maybe it makes sense to divide it  
16 into two, which is the 100 percent. And what's the third  
17 category, the stretch?

18 MR. KAROTKIN: Can I have one minute?

19 THE COURT: Sure.

20 MR. KAROTKIN: May I make a suggestion?

21 THE COURT: Sure.

22 MR. KAROTKIN: With respect to the relief we are  
23 seeking today, which is only the second quarter payment, I'm  
24 advised that those targets which would enable the full  
25 payment of that amount were achieved. So the incentive

1 amount was achieved. There's not an issue of people  
2 receiving --

3 THE COURT: Well, what I was going to say is that  
4 I would approve the incentive portion, which is the 100  
5 percent in stretch. Because based upon the facts which are  
6 set forth in the declarations, they've been developed  
7 consistently with the past -- and maybe mis-consistently in  
8 the past, apparently they have been reached, which is good.  
9 With respect to the retention portion, I would approve it,  
10 except for the four or five individuals and the relative.  
11 I'm don't know how you're going to solve the relative  
12 problem, maybe the -- but the other people who were  
13 appointed by the board can be resolved with a little more  
14 disclosure and just kick that over to the next hearing.

15 MR. KAROTKIN: That's fine. But I think what I'm  
16 saying is kick it over to the next hearing because every  
17 individual has met the incentive portion.

18 THE COURT: Maybe the incentive is too low?

19 MR. KAROTKIN: No, it's actually not too low.

20 THE COURT: Everybody (indiscernible).

21 MR. KAROTKIN: Well, they're terrific operators,  
22 Your Honor.

23 THE COURT: But this is a continuing process.

24 MR. KAROTKIN: Again, and the next two payments  
25 have been reserved for future hiring.

1 THE COURT: I hear what you're saying, but I still

2 --

3 MR. KAROTKIN: But we'll give you additional  
4 information on the other folks.

5 THE COURT: All right. Is that an acceptable  
6 resolution of this issue; does anybody want to be heard?

7 MR. LEES: Your Honor, Alex Lees of Milbank for  
8 the committee. As counsel has represented, we are  
9 adjourning a number of issues. I just want to make very  
10 clear that we have raised some issues with the Debtors. We  
11 have real substantive issues. Unlike the U.S. Trustee,  
12 these are not procedural issues. It's got what targets are  
13 appropriate, whether incentives are properly aligned, and  
14 we're trying to work that out. We've tried to take a very  
15 targeted approach, which is why we're not objecting to the  
16 rank-and-file and to the second quarter payment for the  
17 midlevel. But we hope to work that out with them. And if  
18 they don't, we will be back before Your Honor.

19 THE COURT: What's the adjourn date of this?

20 MR. KAROTKIN: September 15th.

21 THE COURT: All right. As I said, I'll approve  
22 the KERP. I don't hear an objection to the KERP.

23 MR. LEES: No, Your Honor. I just wanted to make  
24 clear that we're reserving our rights on the remainder.

25 THE COURT: All right.

1 MR. KAROTKIN: The only other item, I think, is  
2 the discretionary fund.

3 THE COURT: Well, the discretionary is apparently  
4 kind of a true offer where if you hire somebody else, you  
5 can put them in the same position, as I assume, a person of  
6 comparable -- a person in a comparable position would earn  
7 that person (indiscernible).

8 MR. KAROTKIN: Yes, they would.

9 MS. GOLDEN: I apologize, Your Honor. We would  
10 also like a copy of whatever is submitted to the Court.

11 THE COURT: Of course, of course.

12 MS. GOLDEN: We have the right to review as well.

13 THE COURT: Of course. So I'm approving the KERP.  
14 The KEIP, K-E-I-P, is being adjourned the September 15th,  
15 and I'll approve to the KEP to the extent they're paying the  
16 second quarterly payment based upon the representation that  
17 the targets, the 100 percent target at least, has been  
18 reached.

19 MR. KAROTKIN: Yes, sir.

20 THE COURT: So, I don't have a problem with that  
21 portion of it as an incentive program. Subject to hearing  
22 from the committee, all this is without prejudice to a  
23 challenge to the KEP.

24 MR. KAROTKIN: And I think that the Order we  
25 provided you accurately reflects what you just said.

1 THE COURT: Does it?

2 MR. KAROTKIN: I think the revised Order  
3 accurately reflects what you just said.

4 THE COURT: If you will just submit an Order. If  
5 there are any further changes off of the revised Order, and  
6 then just submit a blackline copy of the Order.

7 MR. KAROTKIN: We will do so. Thank you, sir.

8 THE COURT: Last, I think we have the equity  
9 committee motion. It's my motion, but I'll give up the  
10 floor. Didn't stop him from sitting there for two hours,  
11 he's jumped up.

12 MR. KAROTKIN: Yeah, I seen him already.

13 THE COURT: I'll hear everybody, but we're not  
14 trying this issue today. I just want to hear about the  
15 scope of hearing and set the schedule.

16 MR. KAROTKIN: Yeah, as we indicated in our  
17 omnibus response, in addition to addressing why an equity  
18 committee is not appropriate here, we intend to take  
19 discovery. We've asked for a status conference for Your  
20 Honor to set an appropriate schedule, recognizing that, I  
21 think you said yourself in the SunEdison decision that it's  
22 not a valuation hearing.

23 THE COURT: No, it's not. But on the other hand,  
24 if people are going to give me valuation evidence, which  
25 apparently most singulars are going to do, I'll consider it.

1 MR. KAROTKIN: Okay. And as a consequence of  
2 that, we're going to want to take the deposition of the  
3 (indiscernible).

4 THE COURT: It sounds like a valuation hearing.

5 MR. KAROTKIN: And have the opportunity to present  
6 appropriate evidence.

7 THE COURT: How long do you need to discovery,  
8 besides taking the deposition of their -- who is it, Mr.  
9 Lewis?

10 MR. KAROTKIN: Mr. Lewis. I think that if we were  
11 to schedule the hearing sometime mid --

12 THE COURT: Just don't have a discovery --

13 MR. KAROTKIN: By now, we're just talking about  
14 the deposition of Mr. Lewis.

15 THE COURT: Okay. And notwithstanding that it's  
16 Labor Day coming up, I assume you could accomplish that in  
17 30 days?

18 MR. KAROTKIN: Yes, sir.

19 THE COURT: All right. Anybody else feel they  
20 need discovery in this, on this matter?

21 MR. NEIER: Your Honor, David Neier on behalf of  
22 Wells Fargo. Both of the prepetition secured parties, as  
23 the first lien and the second liens, filed joinders, and we  
24 --

25 THE COURT: Joinders in the motion or the



1 opposition?

2 MR. NEIER: Joinders in the opposition.

3 THE COURT: Okay.

4 MR. NEIER: So we want to be active participants  
5 both in the discovery and in the deposition. And while it's  
6 really great that the seconds believe they're the fulcrum  
7 and the unsecured creditors have put in pleadings that  
8 they're the fulcrum, and now the equity has come in and said  
9 they're the fulcrum.

10 THE COURT: Maybe everybody will get their  
11 (crosstalk).

12 MR. NEIER: Nobody's demonstrated that we're not  
13 the fulcrum, and we don't want to be the fulcrum. But our  
14 debt is already trading at a discount and the unit holder is  
15 trading about half of what SunEdison is trading.

16 THE COURT: Well, SunEdison's a different case. I  
17 do have a question for the people who have put in papers on  
18 behalf of Equity. I notice that there are preferred unit  
19 holders and common unit holders. Are they in the same  
20 position, or do you really need to committees?

21 MR. BIENENSTOCK: Well, they're not in the same --  
22 Martin Bienenstock with Proskaur Rose.

23 THE COURT: And do they have the same cancellation  
24 of debt issues?

25 MR. BIENENSTOCK: I'm always worried as a

1 bankruptcy lawyer to ask questions.

2 MR. KAROTKIN: I could answer to that.

3 THE COURT: No, I think that's an important issue  
4 in the case --

5 MR. KAROTKIN: They do not.

6 THE COURT: -- to differentiate it.,

7 MR. KAROTKIN: The preferred B, the unit Bs do not  
8 have --

9 THE COURT: These are the preferred stockholders?

10 MR. KAROTKIN: Neither of the preferred  
11 stockholders have the (indiscernible)issue.

12 THE COURT: Okay.

13 MR. BIENENSTOCK: Your Honor, speaking for the  
14 clients on whose behalf we filed the motion that's been  
15 about the prefer, the preferred and common unit holders are  
16 asking for one committee; some of them have both preferred.  
17 I had actually stood up for a different purpose, Your Honor.

18 THE COURT: Okay.

19 MR. BIENENSTOCK: Going back to the Court's  
20 initial inquiry on discovery. If the Debtor or the  
21 statutory credit's committee is going to put on any type of  
22 valuation witness or proffer some type of report, within  
23 that same 30 days, we would like the opportunity to take  
24 their deposition. So we'd like them to designate that  
25 person or entity in the next seven days, and then we'll

1 schedule a deposition so we can get this done within the 30  
2 days.

3 THE COURT: Well, I don't know if they have to --  
4 if they do intend to do it and they have such a report  
5 ready, Mr. Lewis has already committed.

6 MR. BIENENSTOCK: Right, but I'm saying -- I'm not  
7 asking for the report in seven days. I'm saying tell us  
8 within the next seven days if you're going to do it, so that  
9 we can take that person or entity's deposition within the  
10 same 30 days. Otherwise, this is going to stretch out far  
11 too long.

12 THE COURT: Well, it may, and that may be a result  
13 of a -- it sounds like it's turning into a valuation  
14 hearing.

15 MR. BIENENSTOCK: Which we don't want.

16 THE COURT: I understand that, but somebody's put  
17 in, you know, an expert valuation report. And I have to  
18 consider it, I can't not consider it.

19 MR. BIENENSTOCK: Especially when one of the  
20 Court's considerations in SunEdison and every other equity  
21 committee motion goes to the issue of is there some  
22 plausibility of equity value. We understand that. We,  
23 frankly, think it's enough for people just to submit their  
24 reports. But now that they're taking discovery, we want to  
25 try to keep a level playing field.

1 THE COURT: Well, I had an evidentiary hearing in  
2 SunEdison, and I can have an evidentiary hearing on a  
3 competing arguments regarding whether or not Debtor is  
4 hopefully insolvent. It could be interpreted the Debtor is  
5 hopelessly insolvent, but because they concealed the D  
6 issue, concealed the I issue, I would think that a committee  
7 is appropriate only just on that issue.

8 MR. BIENENSTOCK: We agree.

9 THE COURT: But, you know, that doesn't -- okay.  
10 Why don't we do this? Any other reports have to be filed  
11 within 30 days. In the meantime, you can take Mr. Lewis's  
12 deposition within the 30 days. We'll have another  
13 conference third week in September, and then we'll decide  
14 whether you need any further discovery or we can just go  
15 straight to a hearing on this. How does that sound?

16 MR. BIENENSTOCK: That'd be great.

17 MR. KAROTKIN: That's fine.

18 MR. LEES: Your Honor, Alex Lees for the  
19 committee. As has been recognized, valuation is an issue  
20 that's coming to the fore. We filed a brief statement  
21 yesterday. The committee obviously has strong views on  
22 valuation and the increasing value of the Midland basin  
23 assets, as well as the reduction in costs that has led to  
24 the improvement in value across the Debtor's portfolio. So  
25 we also intend to be active participants in discussions

1 about value and also discussions about the appropriate  
2 disposition of the Debtor's assets.

3 THE COURT: Do you intend to file an expert report  
4 on valuation?

5 MR. BIENENSTOCK: At this time, I can't say one  
6 way or another.

7 THE COURT: Okay. Actually, I have a question,  
8 it's a practical question. If I appoint a committee, how do  
9 you get paid in this case?

10 MR. BIENENSTOCK: Your Honor --

11 THE COURT: There's no carve out for an equity  
12 committee.

13 MR. BIENENSTOCK: I understand. That is not a  
14 problem for the following simple reason. If they're going  
15 to confirm a plan, one requirement is that all allowed admin  
16 expenses have to be paid.

17 THE COURT: Okay, all right.

18 MR. NEIER: Your Honor, David Neier, on behalf of  
19 Wells Fargo.

20 THE COURT: I remember you from the other  
21 (indiscernible).

22 MR. NEIER: I just want to say one thing, okay.  
23 On payment, there had been equity committees appointed where  
24 they're only paid as any recovery to --

25 THE COURT: I know.

1 MR. NEIER: -- as opposed to being paid from the  
2 lender --

3 THE COURT: I suggested that in SunEdison, but  
4 they didn't like that.

5 MR. NEIER: Well, we make the same suggestion  
6 here, Your Honor, especially if it's just about the  
7 purviews.

8 MR. BIENENSTOCK: To Mr. Neier's point, I think  
9 Mr. Neier's clients overlooks, as certain other parties  
10 overlook, the fact that Congress put an examiner into the  
11 Code on a mandatory basis in this case, if anyone moves for  
12 it, and there's no cost benefit test. The difference  
13 between an examiner --

14 THE COURT: That can fix the budget. If you're  
15 taking about the second subsection, I'll fix the budget.

16 MR. BIENENSTOCK: You couldn't but it's going to  
17 be based on an appropriate investigation, so it still could  
18 be a significant number. The only difference --

19 THE COURT: You see, what you said concerns me.  
20 When you start to talk about an appropriate investigation  
21 and you go beyond the value and you're talking about your  
22 CODI claims, which you alluded to, that means I got the  
23 Debtor doing it, maybe a credit's committee doing it, and  
24 now you're implying that you want to do it. And that sounds  
25 like it starts to get expensive.

1 MR. BIENENSTOCK: Well, Your Honor --

2 THE COURT: Could I appoint an equity committee  
3 solely on the CODI issue so that you can ensure that, to the  
4 extent the Debtor is proposing a plan or is contemplating  
5 something preplan that will protect, I guess, it's the  
6 common unit holders. Yeah, you're authorized to act as a  
7 committee for that. But whatever else you do, you're doing  
8 it on your own dime.

9 MR. BIENENSTOCK: Well, two things, Your Honor.  
10 First, please do not assume that the committee we're asking  
11 for would do a duplicate or a triplicate investigation. I  
12 can imagine reasons why we would look a stance at a Debtor's  
13 investigation of its own people, but the statutory  
14 creditor's committee is another story.

15 On Your Honor's question as to a committee solely  
16 for the cancellation of indebtedness issue, my preliminary  
17 reaction to that is that would be insufficient. It's got to  
18 include both that and valuation because the bottom line is,  
19 each constituency of creditors are going to look for enough  
20 value for themselves. And we've seen in enough cases in  
21 this circuit and other circuits that constituencies of  
22 creditors love it when they find more than enough value, but  
23 can tell the Court, well, it's just enough for us, and then  
24 they get a windfall. So there's no way we believe an equity  
25 committee should be prevented from valuation.

1 THE COURT: I guess I didn't phrase the question  
2 properly. If I determine that the Debtor is hopefully  
3 insolvent -- I should have said that -- could I then appoint  
4 an equity committee for the purpose of, for lack of a better  
5 phrase, the CODI issue.

6 MR. BIENENSTOCK: I think the answer is yes, of  
7 course. But perhaps I'm guilty of being biased here, but I  
8 don't think the Court can remotely on these facts find  
9 hopeless insolvency.

10 THE COURT: That brings me to my -- actually, I  
11 had a question for Mr. Karotkin, if I could ask it. One of  
12 the arguments you make in the KEIP is that these people are  
13 very important and they're administering \$4 billion worth of  
14 assets. If I grant the motion on that basis, are you  
15 judicially estopped from arguing that the Debtor's assets  
16 are not worth at least \$4 billion.

17 MR. KAROTKIN: I think that was an erroneous  
18 reflection of the party, Your Honor.

19 THE COURT: Well, but that's what you say.

20 MR. KAROTKIN: It was really take the book value.

21 THE COURT: Well, are you telling me that they're  
22 not administering \$4 billion worth of assets?

23 MR. KAROTKIN: Pardon me?

24 THE COURT: Are you telling --

25 MR. KAROTKIN: I'm telling you there is no \$4



1 billion worth of Enterprise value.

2 THE COURT: Notwithstanding what the motion says.

3 MR. KAROTKIN: Notwithstanding what the motion  
4 says.

5 THE COURT: Okay. All right, so let's do this to  
6 save time. Oh, Mr. Gamza, come up. Come on, we'll share.

7 MR. GAMZA: Very briefly, Your Honor. First of  
8 all, I'd like to introduce Mr. Lewis who's here.

9 MR. LEWIS: How do you do?

10 THE COURT: You've become a popular guy in these  
11 proceedings.

12 MR. GAMZA: Also, in response to Your Honor's  
13 question, we also represent both preferred and common. We  
14 think that one committee would certainly be sufficient.

15 THE COURT: Certainly, on a valuation basis, it's  
16 one committee, although does one have a preference over the  
17 other in distribution? I'm sure they do.

18 MR. GAMZA: But it's not uncommon, Your Honor, for  
19 different interests to be represented on a single committee.  
20 It happens quite commonly.

21 THE COURT: I understand. But if the argument is,  
22 you know, when you get to the level, if they're satisfied,  
23 they're not going to worry about the next level and you have  
24 two levels, it's always an issue.

25 MR. BIENENSTOCK: Committees with senior and

1 junior debt exist all the time.

2 MR. GAMZA: The last point, Your Honor, that I  
3 make is the CODI and the valuation are almost flip sides of  
4 the same coin because of the risk value for equity, which,  
5 you know, we believe there is, then you don't have a CODI  
6 issue. And if you have a CODI issue, it's because there's  
7 no sufficient value for equity. So it seems like one way or  
8 another, there are interests here of equity that will need  
9 to be represented in the case.

10 THE COURT: We have someone else here. Yes, sir.

11 MR. LOHAN: Good afternoon, Your Honor. Brian  
12 Lohan on behalf of Equity First Holdings. We have 10  
13 million common units; we're only in the common. And I agree  
14 with what Mr. Hammer has said, if (indiscernible) goes beyond  
15 the debt, then the CODI issue is resolved. The only other  
16 point I'd like to make is we did not file expert valuation  
17 because we didn't think this was going to turn into a  
18 valuation.

19 THE COURT: Well, that's what it looks like.

20 MR. LOHAN: And I don't know that we will, but we  
21 will make a decision quickly.

22 THE COURT: Well, let's just say that any expert  
23 report, any reports on value, have to be filed within 30  
24 days. I'll schedule another conference for Thursday,  
25 September 22nd, which is just beyond the 30 days, and then

1 you'll decide how to proceed at that point. And in the  
2 meantime, Mr. Karotkin, you can take Mr. Lewis's deposition  
3 within the 30 days.

4 MR. KAROTKIN: Thank you, sir.

5 THE COURT: All right.

6 MR. KAROTKIN: I think that concludes the agenda.

7 THE COURT: All right, thank you very much.

8 ALL: Thank you, Your Honor.

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11 (Whereupon these proceedings were concluded at 12:39 PM)

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C E R T I F I C A T I O N

I, Sonya Ledanski Hyde, certified that the foregoing  
transcript is a true and accurate record of the proceedings.

Sonya  
Ledanski Hyde

Digitally signed by Sonya Ledanski  
Hyde  
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